

AMENDMENTS TO THE DRAWINGS

The attached sheet of drawings includes changes to Figure 7. This sheet, which includes Figure 7, replaces the original sheet including Figure 7. Specifically, in Figure 7, the element originally labeled "1439" as been changed to "143."

Attachment: Replacement Sheet
Annotated Sheet Showing Changes

REMARKS

Initially, Applicants would like to thank the Examiner for the courtesies extended during the personal interview of May 18, 2006, during which the rejections of the current Office Action were discussed.

Claims 1, 3-6, 9-12 and 15-17 are pending in the application. Claim 1 has been amended to recite the added feature of a recyclable carpet or carpet tile. Support for this amendment can be found at least on page 20, lines 10 – 21 of the specification. Accordingly, no new matter has been introduced by this amendment.

In amended Figure 7, numerical label “1439” has been changed to numerical label “143.” Support for this amendment can be found at least on page 46 of the specification at line 24. Accordingly, no new matter has been added by this amendment.

A. *Rejection of Claims 1, 3-6, 9-12 and 15-16 over Parikh, Higgins and Fink*

The Current Office Action rejects claims 1, 3-6, 9-12 and 15-16 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Parikh in view of Higgins and Fink ‘530. The stated grounds for this rejection is “reasons of record.” As such, Applicants understand that the grounds for this rejection continue to be the matters stated in the February 17, 2004 Office Action, which set forth the last outstanding grounds of rejection. While Applicants continue to traverse the merits of this rejection, Applicants submit that Parikh, the primary reference in this rejection, is not available for use as prior art against the current claims because the invention of the Parikh reference and the claimed invention were, at the time the claimed invention was made, owned by or subject to an obligation of assignment to the same person or organization, namely the Dow Chemical Company.

35 U.S.C. 103(c) explains that subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed

invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person. Further, MPEP Section 706.02(I)(1) I. states that this provision of 35 U.S.C. § 103(c)(1) is effective for all applications pending on or after December 10, 2004, and hence applies to the instant application.

Here, the Parikh reference did not become publicly available until its issuance on February 5, 2002, almost 4 years after the filing of the instant application. Therefore, the Parikh reference only qualifies as prior art against the current claims pursuant to the provisions of 35 U.S.C. § 102(e). Further, the Parikh reference is being applied pursuant to an obviousness rejection under 35 U.S.C. § 103(a). Therefore, under the provision of 35 U.S.C. § 103(c)(1) set forth above, the Parikh reference is not available for use as prior art against the present invention pursuant to any obviousness rejections under 35 U.S.C. § 103(a). Thus, at least due to the disqualification of Parikh as available prior art, the rejection of Claims 1, 3-6, 9-12 and 15-16 over Parikh, Higgins and Fink must be withdrawn.

B. *Claim 17 stands rejected under 35 U.S.C. § 103(a) over Parikh in view of the Higgins and Fink '530 as applied to claims 1 and 16 above, and further in view of Jialanella for "reasons of record."*

As shown above, the rejections of claims 1, 3-6, 9-12 and 15-16 over the combination of Parikh, Higgins and Fink '530 cannot be sustained due to the disqualification of Parikh as available prior art. Therefore, the rejection of claim 17 must also fail for these same reasons. However, notwithstanding the disqualification of Parikh, Applicants further submit that Jialanella is also not available for use as prior art against the current claims because the invention of the Jialanella reference and the claimed invention were, at the time the claimed invention was made, owned by or subject to an obligation of assignment to the same person or organization, namely the Dow Chemical Company.

As detailed above, under 35 U.S.C. § 103(c), subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the

claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person. Further, the provision of 35 U.S.C. § 103(c)(1) is effective for all applications pending on or after December 10, 2004, and hence applies to the instant application..

Here, Jialanella did not become publicly available until its issuance on April 21, 1998, almost two months after the utility filing date of the instant application. Therefore, Jialanella only qualified as prior art pursuant to the provisions of 35 U.S.C. § 102(e). Further, in the current Office Action, Jialanella is being applied pursuant to an obviousness rejection under 35 U.S.C. § 103(a). Therefore, under the provision of 35 U.S.C. § 103(c)(1) set forth above, Jialanella is not available for use as prior art against the present invention pursuant to any obviousness rejections presented under 35 U.S.C. § 103(a). Thus, due to the disqualification of Jialanella as available prior art, the rejection of Claim 17 over Parikh, Higgins and Fink, further in view of Jialanella must also be withdrawn.

C. *Claims 1, 3-6, 9-12 and 15-16 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Higgins and Fink '530, in view of the Lai patents*

In paragraph 7, the Examiner continues to reject claims 1, 3-6, 9-12 and 15-16 over Higgins and Fink '530 in view of the Lai patents for reasons of record. In particular the Current Office Action cites the previously identified sections of Higgins and Fink '530 where such sections mention hot melt coatings and carpet materials. Further, the Office Action contends these previously identified sections of Higgins and Fink '530 provide the requisite motivation for one of ordinary skill in the art to select the compositions of the Lai patents for use as a suitable hot melt adhesive backing material.

As amended, Claim 1 now recites a recyclable carpet or carpet tile comprising, in part, an adhesive composition, wherein the adhesive composition comprises a polymer component comprising from about 80 to about 99 weight percent based upon total weight of the polymer component of at least one homogenously branched ethylene polymer characterized as having a

short chain branching distribution index (SCDBI) of greater than or equal to 50 percent, wherein the adhesive composition has substantially penetrated and substantially consolidated the fibers, wherein the adhesive composition is not integrally fused to the primary backing material, and wherein the carpet has a tuft bind of 5 pounds or more as measured according to ASTM D-1335-67. The combination of Higgins, Fink '530, and the Lai patents, all fail to teach or even suggest a carpet or carpet tile with the combined features of recyclability and an adhesive composition that is not integrally fused to the primary backing material.

In relying on Fink '530, the Current Office Action cites the background section of this reference. More specifically, the Examiner explains in paragraphs 21 and 23 of the Office Action that Fink is not relied upon for its inventive "integrally fused" adhesive backcoat and primary backing, but rather for its teachings of what is known in the art. However, Fink's description of what is known in the art clearly teaches that carpets containing these "conventional" hot melt adhesives are not recyclable. (*See* Fink '530, Col. 3, lines 63-65). In the context of this background discussion, the remainder of Fink's detailed discussion seeks to provide, among other aspects, a recyclable carpet by disclosing a carpet comprising an isotactic polyolefin polymer adhesive integrally fused to the primary backing. Thus, there is no portion of the Fink's disclosure that can support a contention that one of skill in the art would be motivated by Fink's description of what is known in the art to select the adhesive compositions of the Lai patents with the expectation of arriving at a recyclable carpet or carpet tile wherein the adhesive composition is not integrally fused to the primary backing material.

Accordingly, for at least this reason, the rejection of Claims 1, 3-6, 9-12, and 15-16 over Higgins and Fink '530 in view of the Lai patents must be withdrawn.

- D. *Claim 17 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over the cited Higgins, Fink '530 and Lai patents as applied to claims 1 and 16 and further in view of Jialanella.***

The rejection of paragraph 8 of the Current Office Action is based upon the combination of Higgins, Fink '530, the Lai patents and an additional reference, Jialanella. As noted, Higgins, Fink '530 and Jialanella cannot be combined to render the invention of Claim 1 obvious. Therefore, it follows that these references cannot be combined with Jialanella to render claim 17 obvious.

Furthermore, notwithstanding the failure of the combination Higgins, Fink '530, the Lai patents and Jialanella to obviate the invention of Claim 17, as detailed above, Jialanella has been disqualified as available prior art against the claims of the instant application pursuant to the provision of 35 U.S.C. 103(c). Accordingly, for at least these reasons, the rejection of Claim 17 over Higgins, Fink '530 and the Lai patents further in view of Jialanella must be withdrawn.

- E. *Claims 1, 3-6, 9-12 and 15-16 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Dibbern in view of Higgins and Fink '530***

In paragraph 9, the Office Action rejects claims 1, 3-6, 9-12 and 15-16 over Dibbern in view of Higgins and Fink '530. In particular the Office Action contends that Dibbern teaches the claimed invention with the exception of the claimed carpet structure. To that end, the Office Action again looks to the teachings of Higgins and Fink '530 for guidance on how to employ an adhesive composition in a carpet. For the reasons set forth below, Applicants respectfully submit that these rejections are in error and should be withdrawn.

Dibbern discloses highly filled thermoplastic compositions. These compositions can be extruded into sheets that are, for example, suitable for use as sound deadening backside coatings or sheets in automotive carpet applications. Significantly, Dibbern fails to teach or suggest that these highly filled compositions can be used as an adhesive backing in a carpet application. Therefore, contrary to the assertion of the instant rejection, one of skill in the art would not have

been motivated by the teaching of Dibbern to seek guidance from Higgins and Fink '530 on how to employ said highly filled compositions as an adhesive backing in a carpet application.

Further, even assuming *arguendo* that one of ordinary skill in the art would have sought guidance from the disclosures of Higgins and Fink '530, any reliance on Higgins and Fink '530, as described above, would result in a skilled artisan seeking to arrive at a carpet structure having an adhesive backing material integrally fused to a primary backing material. Once again, Fink's description of what is known in the art clearly teaches that carpets containing "conventional" hot melt adhesives are not recyclable. (*See* Fink '530, Col. 3, lines 63-65). Therefore, in the context of this recognized deficiency, the remainder of Fink's detailed discussion seeks to provide, among other aspects, a recyclable carpet by disclosing a carpet comprising an isotactic polyolefin polymer adhesive integrally fused to the primary backing. Thus, any reliance on Fink for guidance on how to employ an adhesive composition into a recyclable carpet or carpet tile could only result in the skilled artisan seeking to provide a carpet or carpet tile having an adhesive composition integrally fused to a primary backing.

F. *Claim 17 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over the cited Higgins, Fink '530 and Lai patents as applied to claims 1 and 16 and further in view of Jialanella.*

The rejection of paragraph 10 of the Current Office Action is based upon the combination of Dibbern, Higgins, and Fink '530, in view of an additional reference, Jialanella. As noted, Dibbern, Higgins, and Fink '530 cannot be combined to render the invention of Claim 1 obvious. Therefore, it follows that these references cannot be combined with Jialanella to render claim 17 obvious.

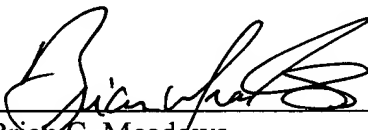
Furthermore, notwithstanding the failure of the combination Dibbern, Higgins, and Fink '530 to obviate the invention of Claim 17, as detailed above, Jialanella has been disqualified as available prior art against the claims of the instant application. Accordingly, for at least these reasons, the rejection of Claim 17 over Dibbern, Higgins, and Fink '530 further in view of Jialanella must be withdrawn.

CONCLUSION

In light of the Amendments and Remarks submitted herein, it is believed that the claims are in condition for allowance and Applicants respectfully seek notification of same.

A Credit Card Payment Authorization Form PTO-2038 authorizing payment in the amount of \$1020.00, for the concurrently filed Request for Three Month Extension of Time is also enclosed. This amount is believed to be correct; however, the Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 14-0629.

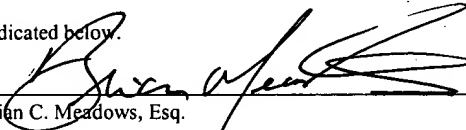
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Brian C. Meadows, Esq.

July 20, 2006
Date